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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,637	01/13/2004	Daniel Kwoh	50843/WWM/E327	4667
23363 7590 07/17/2007 CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			EXAMINER NELSON, FREDA ANN	
			ART UNIT 3628	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/757,637

Applicant(s)

KWOH, DANIEL

Examiner

Freda A. Nelson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The amendment received on April 27, 2006 is acknowledged and entered. Claims 7-9 and 19 have been canceled. Claims 1-6, 10-18, and 20-23 are currently pending.

#### ***Response to Amendment and Arguments***

Applicant's arguments with respect to claims 1-6, 10-18, and 20-23 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 4-5 and 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are:  
  
determining if the comparison exceeds a predetermined value

2. Claims 4-5, 10 and 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 4, because applicant has not provided an alternative "if not" statement, the examiner takes the position that the comparison does not exceed a predetermined value, thus eliminating calculating a new cruise rating.

As per claim 5, because applicant has not provided an alternative "if not" statement, the examiner takes the position that the comparison does not exceed a predetermined value, thus eliminating calculating a new cruise rating.

As per claim 10, because applicant has not provided an alternative "if not" statement, the examiner takes the position that the consistency indicator does not meet a predetermined-requirement, thus eliminating calculating a price index of each cruise ship.

As per claim 22, because applicant has not provided an alternative "if not" statement, the examiner takes the position that the comparison does not exceed a predetermined value, thus eliminating identifying one or more additional correlation coefficients, calculating a new price index, identifying one or more additional correlation coefficients, and calculating the expected price.

As per claim 23, because applicant has not provided an alternative "if not" statement, the examiner takes the position that the comparison does not exceed a predetermined value, thus eliminating obtaining new pricing data, identifying one or more correlation between the new pricing data and at least one price effecting factor, calculating a new price index, and calculating the expected price.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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1. Claims 16-18 and 20-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. See detailed discussion below.

As the Supreme Court held, Congress chose the expansive language of 35 U.S.C. § 101 so as to include "anything under the sun that is made by man." *Diamond v. Chakrabarty*, 447 U.S. 303, 308-09, 206 USPQ 193, 197 (1980). In *Chakrabarty*, 447 U.S. at 308-309, 206 USPQ at 197, the court stated:

In choosing such expansive terms as "manufacture" and "composition of matter," modified by the comprehensive "any," Congress plainly contemplated that the patent laws would be given wide scope. The relevant legislative history also supports a broad construction. The Patent Act of 1793, authored by Thomas Jefferson, defined statutory subject matter as "any new and useful art, machine, manufacture, or composition of matter, or any new or useful improvement [thereof]." Act of Feb. 21, 1793, ch. 11, § 1, 1 Stat. 318. The Act embodied Jefferson's philosophy that "ingenuity should receive a liberal encouragement." *V* Writings of Thomas Jefferson, at 75-76. See *Graham v. John Deere Co.*, 383 U.S. 1, 7-10 (148 USPQ 459, 462-464) (1966). Subsequent patent statutes in 1836, 1870, and 1874 employed this same road language. In 1952, when the patent laws were recodified, Congress replaced the word "art" with "process," but otherwise left Jefferson's language intact. The Committee Reports accompanying the 1952 Act inform us that Congress intended statutory subject matter to "include anything under the sun that is made by man." S. Rep. No. 1979, 82d Cong., 2d Sess., 5 (1952); H.R. Rep. No. 1923, 82d Cong., 2d Sess., 6 (1952). [Footnote omitted]

This perspective has been embraced by the Federal Circuit:

The plain and unambiguous meaning of section 101 is that any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may be patented if it meets the requirements for patentability set forth in Title 35, such as those found in sections 102, 103, and 112. The use of the expansive term "any" in section 101 represents Congress's intent not to place any restrictions on the subject matter for which a patent may be obtained beyond those specifically recited in section 101 and the other parts of Title 35.... Thus, it is improper to read into section 101 limitations as to the subject matter that may be patented where the legislative history does not indicate that Congress clearly intended such limitations.

Alappat, 33 F.3d at 1542, 31 USPQ2d at 1556.

35 U.S.C. § 101 defines four categories of inventions that Congress deemed to be the appropriate subject matter of a patent: processes, machines, manufactures and compositions of matter.

Federal courts have held that 35 U.S.C. § 101 does have certain limits. First, the phrase “anything under the sun that is made by man” is limited by the text of 35 U.S.C. § 101, meaning that one may only patent something that is a machine, manufacture, composition of matter or a process. See, e.g., Alappat, 33 F.3d at 1542, 31 USPQ2d at 1556; *In re Warmerdam*, 33 F.3d 1354, 1358, 31 USPQ2d 1754, 1757 (Fed. Cir. 1994). Second, 35 U.S.C. § 101 requires that the subject matter sought to be patented be a “useful” invention. Accordingly, a complete definition of the scope of 35 U.S.C. § 101, reflecting Congressional intent, is that any new and useful process, machine, manufacture or composition of matter under the sun that is made by man is the proper subject matter of a patent.

The subject matter courts have found to be outside of, or exceptions to, the four statutory categories of invention is limited to abstract ideas, laws of nature and natural phenomena. These three exclusions recognize that subject matter that is not a practical application or use of an idea, a law of nature or a natural phenomenon is not patentable. See, e.g., *Rubber-Tip Pencil Co. v. Howard*, 87 U.S. (20 Wall.) 498, 507 (1874) (“idea of itself is not patentable, but a new device by which it may be made practically useful is”); *Mackay Radio & Telegraph Co. v. Radio Corp. of America*, 306 U.S. 86, 94, 40 USPQ 199, 202 (1939) (“While a scientific truth, or the mathematical expression of it, is not

patentable invention, a novel and useful structure created with the aid of knowledge of scientific truth may be.”); Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759 (“steps of ‘locating’ a medial axis, and ‘creating’ a bubble hierarchy . . . describe nothing more than the manipulation of basic mathematical constructs, the paradigmatic ‘abstract idea’”).

The courts have also held that a claim may not preempt ideas, laws of nature, or natural phenomena. The concern over preemption was expressed as early as 1852. See *Le Roy v. Tatham*, 55 U.S. (14 How.) 156, 175 (1852) (“A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right.”); *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, 333 U.S. 127, 132, 76 USPQ 280, 282 (1948) (combination of six species of bacteria held to be nonstatutory subject matter). Accordingly, one may not patent every “substantial practical application” of an idea, law of nature or natural phenomena because such a patent “in practical effect be a patent on the [idea, law of nature or natural phenomena] itself.” *Gottschalk v. Benson*, 409 U.S. 63, 71-72, 175 USPQ 673, 676 (1972).

A claim that requires one or more acts to be performed defines a process. The applicant’s invention is directed to a method or a process and thus falls within an enumerated statutory class.

However, not all processes are statutory under 35 USC Section 101. To be statutory, a claimed process must either: (A) result in a physical transformation which a practical application is either disclosed in the specification or would have been known to

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a skilled artisan, or (B) be limited to a practical application which produces a useful, tangible, and concrete result. See *Diehr*, 450 U.S. at 183-84, 209 USPQ at 6.

Upon making the determination that the invention is a method or process that falls within an enumerated statutory class, the Examiner must now determine whether the claimed invention falls within one of the Section 101 judicial exceptions, i.e., is the invention directed to laws of nature, natural phenomena or an abstract idea. Moreover, in evaluating whether the claims meet the requirements of section 101, the Supreme Court requires the Examiner to consider the claims as a whole to determine whether the invention is for a particular application of an abstract idea, rather than an abstract idea itself.

**Exceptions: Laws of nature, natural Phenomena and Abstract Ideas:**

Inventions directed to nothing more than abstract ideas (such as mathematical algorithms), natural phenomena, and laws of nature are not eligible and therefore are excluded from patent protection. *Diehr*, 450 U.S. at 185, 209 USPQ at 7; accord, e.g., *Chakrabarty*, 447 U.S. at 309, 206 USPQ at 197; *Parker v. Flook*, 437 U.S. 584, 589, 198 USPQ 193, 197 (1978); *Benson*, 409 U.S. at 67-68, 175 USPQ at 675; *Funk*, 333 U.S. at 130, 76 USPQ at 281. "A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right." *Le Roy*, 55 U.S. (14 How.) at 175. Instead, such "manifestations of laws of nature" are "part of the storehouse of knowledge," "free to all men and reserved exclusively to none." *Funk*, 333 U.S. at 130, 76 USPQ at 281.



Thus, "a new mineral discovered in the earth or a new plant found in the wild is not patentable subject matter" under Section 101. Chakrabarty, 447 U.S. at 309, 206 USPQ at 197. "Likewise, Einstein could not patent his celebrated law that  $E=mc^2$ ; nor could Newton have patented the law of gravity." Ibid. Nor can one patent "a novel and useful mathematical formula," Flook, 437 U.S. at 585, 198 USPQ at 195; electromagnetism or steam power, O'Reilly v. Morse, 56 U.S. (15 How.) 62, 113-114 (1853); or "[t]he qualities of \* \* \* bacteria, \* \* \* the heat of the sun, electricity, or the qualities of metals," Funk, 333 U.S. at 130, 76 USPQ at 281; see Le Roy, 55 U.S. (14 How.) at 175.

While abstract ideas, natural phenomena, and laws of nature are not eligible for patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be. In evaluating whether a claim meets the requirements of section 101, the claim must be considered as a whole to determine whether it is for a particular application of an abstract idea, natural phenomenon, or law of nature, rather than for the abstract idea, natural phenomenon, or law of nature itself.

**Determine Whether the Claimed Invention Covers Either a § 101 Judicial Exception or a Practical Application of a § 101 Judicial Exception**

The Examiner must ascertain the scope of the claim to determine whether it covers either a § 101 judicial exception or a practical application of a § 101 judicial exception. The conclusion that a particular claim includes a § 101 judicial exception does not end the inquiry because "[i]t is now commonplace that an application of a

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law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.” Diehr, 450 U.S. at 187, 209 USPQ at 8 (emphasis in original); accord Flook, 437 U.S. at 590, 198 USPQ at 197; Benson, 409 U.S. at 67, 175 USPQ at 675. Thus, “[w]hile a scientific truth, or the mathematical expression of it, is not a patentable invention, a novel and useful structure created with the aid of knowledge of scientific truth may be.” Diehr, 450 U.S. at 188, 209 USPQ at 8-9 (quoting Mackay, 306 U.S. at 94); see also Corning v. Burden, 56 U.S. (15 How.) 252, 268, 14 L.Ed. 683 (1854)(“It is for the discovery or invention of some practical method or means of producing a beneficial result or effect, that a patent is granted . . .”).

In light of the rejection under 35 USC Section 112, second paragraph, and in light of the specification, it appears that the applicant is directing the invention to method for rating cruise ships. Assuming this is correct, the Examiner asserts that the applicant’s invention is directed to an abstract idea. The Examiner now must determine if the applicant’s invention is a particular application of an abstract idea.

**Determine Whether the Claimed Invention is a Practical Application of an  
Abstract Idea, Law of Nature, or Natural Phenomenon (§ 101 Judicial  
Exceptions)**

For claims including such excluded subject matter to be eligible, the claim must be for a practical application of the abstract idea, law of nature, or natural phenomenon. Diehr, 450 U.S. at 187, 209 USPQ at 8 (“application of a law of nature or mathematical

formula to a known structure or process may well be deserving of patent protection.”); Benson, 409 U.S. at 71, 175 USPQ at 676 (rejecting formula claim because it “has no substantial practical application”).

To satisfy section 101 requirements, the claim must be for a practical application of the § 101 judicial exception, which can be identified in various ways:

- (a). The claimed invention “transforms” an article or physical object to a different state or thing.
- (b) The claimed invention otherwise produces a useful, concrete and tangible result, based on the factors discussed below.

**a. Practical Application by Physical Transformation**

The applicant’s invention does not transform an article or physical object to a different state or thing. Transferring goods allows the goods to remain in the same state, albeit allowing them to change physical locations.

**b. Practical Application That Produces a Useful, Concrete, and Tangible Result**

For eligibility analysis, physical transformation “is not an invariable requirement, but merely one example of how a mathematical algorithm [or law of nature] may bring about a useful application.” AT&T, 172 F.3d at 1358-59, 50 USPQ2d at 1452. Since the Examiner determined that the claims do not entail the transformation of an article, the Examiner must review the claim to determine if the claim provides a practical application that produces a useful, tangible and concrete result. In determining whether the claim is for a “practical application,” the focus is not on whether the steps taken to achieve a

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particular result are useful, tangible and concrete, but rather that the final result achieved by the claimed invention is "useful, tangible and concrete." The claim must be examined to see if it includes anything more than a § 101 judicial exception. If the claim is directed to a practical application of the § 101 judicial exception producing a result tied to the physical world that does not preempt the judicial exception, then the claim meets the statutory requirement of 35 U.S.C. § 101. If the examiner does not find such a practical application, the examiner has determined that the claim is nonstatutory. In determining whether a claim provides a practical application that produces a useful, tangible, and concrete result, the examiner considers and weighs the following factors:

#### **"USEFUL RESULT"**

For an invention to be "useful" it must satisfy the utility requirement of section 101. The USPTO's official interpretation of the utility requirement provides that the utility of an invention has to be (i) specific, (ii) substantial and (iii) credible. MPEP § 2107 and Fisher, 421 F.3d at \_\_\_, 76 USPQ2d at 1230 (citing the Utility Guidelines with approval for interpretation of "specific" and "substantial").

The Examiner asserts that the applicant's invention has a specific, substantial and credible result and thus produces a useful result.

#### **"TANGIBLE RESULT"**

The tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials

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to a different state or thing. However, the tangible requirement does require that the claim must recite more than a § 101 judicial exception, in that the process claim must set forth a practical application of that § 101 judicial exception to produce a real-world result. *Benson*, 409 U.S. at 71-72, 175 USPQ at 676-77 (invention ineligible because had “no substantial practical application.”). “[A]n application of a law of nature or mathematical formula to a ... process may well be deserving of patent protection.” *Diehr*, 450 U.S. at 187, 209 USPQ at 8 (emphasis added); see also *Corning*, 56 U.S. (15 How.) at 268, 14 L.Ed. 683 (“It is for the discovery or invention of some practical method or means of producing a beneficial result or effect, that a patent is granted . . .”). In other words, the opposite meaning of “tangible” is “abstract.”

The Examiner asserts that the method claim does not produce a real-world result, or beneficial effect and thus has no substantial application. The examiner is unable to determine what is being done with the comparison. The invention as claimed is either directed to a transfer goods, which does not result in a physical transformation or reduction of the goods to a different state or thing, or the invention identifies a abstract concept, and thus is directed to an abstract idea.

### **“CONCRETE RESULT”**

Another consideration is whether the invention produces a “concrete” result. Usually, this question arises when a result cannot be assured. In other words, the process must have a result that can be substantially repeatable or the process must substantially produce the same result again. In *re Swartz*, 232 F.3d 862, 864, 56

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USPQ2d 1703, 1704 (Fed. Cir. 2000) (where asserted result produced by the claimed invention is “irreproducible” claim should be rejected under section 101). The opposite of “concrete” is unrepeatable or unpredictable. Resolving this question is dependent on the level of skill in the art.

The Examiner asserts that the applicant’s invention is repeatable or predictable.

**Determine Whether the Claimed Invention Preempts an Abstract Idea, Law of Nature, or Natural Phenomenon (§ 101 Judicial Exceptions)**

Even when a claim applies a mathematical formula, for example, as part of a seemingly patentable process, the examiner must ensure that it does not in reality “seek[] patent protection for that formula in the abstract.” Diehr, 450 U.S. at 191, 209 USPQ at 10. “Phenomena of nature, though just discovered, mental processes, abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.” Benson, 409 U.S. at 67, 175 USPQ at 675. One may not patent a process that comprises every “substantial practical application” of an abstract idea, because such a patent “in practical effect would be a patent on the [abstract idea] itself.” Benson, 409 U.S. at 71-72, 175 USPQ at 676; cf. Diehr, 450 U.S. at 187, 209 USPQ at 8 (stressing that the patent applicants in that case did “not seek to pre-empt the use of [an] equation,” but instead sought only to “foreclose from others the use of that equation in conjunction with all of the other steps in their claimed process”). “To hold otherwise would allow a competent draftsman to evade the recognized limitations on the type of subject matter eligible for patent protection.” Diehr, 450 U.S. at 192, 209 USPQ at 10.

Thus, a claim that recites a computer that solely calculates a mathematical formula (see Benson) or a computer disk that solely stores a mathematical formula is not directed to the type of subject matter eligible for patent protection.

The applicant's invention is effectively directed to an abstract concept.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**1. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rozell et al. (US PG Pub. 2005/0004830).**

As per claim 1, Rozell discloses electronically obtaining pricing data (paragraph [0037]);

identifying one or more price affecting factors (paragraph [0023],[0029]); and .

calculating, using a processor, one or more correlation coefficients for each of the one more price affecting factors (paragraph [0023],[0029]); and

calculating a rating based on the pricing data, the one or more price affecting factors, and the one or more correlation coefficients (paragraph [0023],[0029],[0051]).

Rozell et al. do not expressly disclose that the pricing data is for cruises calculating a cruise rating.

However, Rozell et al. discloses that for example, although the present invention has been described as operating in a hotel accommodation environment, any suitable business endeavor may benefit from the teachings of the present invention; for example, a rental-car company may use system 10, whereby a series of indices are provided in order to direct or control a marketability index score wherein the score could be based on similar components (as identified herein) or use other suitable parameters for evaluating a given set of travel accommodations; and similarly, various other suitable business structures or reservation-based operations that seek to secure suitable accommodations may benefit from the teachings of system 10.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of evaluating travel accommodations of Rozell et al. to include the feature of rating cruises to provide the user with ratings for a variety of travel accommodations.

As per claim 2, Rozell et al. discloses the method of claim 1, wherein the one or more price affecting factors are comprised of at least one of price, season, cruise itinerary, cruise length, at least one port of call, geographic region, port of embarkation, port disembarkation, date of sail, proximity to a holiday, proximity a school break, and ship's age (paragraph [0008],[0022],[0037],[0053],[0059]).



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**2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rozell et al. (US PG Pub. 2005/0004830), in view of Laufer (US PG Pub. 2004/0006507).**

As per claim 3, Rozell et al. does not disclose that the predetermined time is at least one year.

However, Laufer discloses that the hotel/timeshare facility may be land-based or may be sea or air-based as well (paragraph [0049]); "Hotel" as defined herein thus may include a cruise-ship or airline selling cabins or seats for specific cruises or flights (paragraph [0016]); and the peak period timeshares may include the right to use during intervals and may be valid for at least three years (paragraph [0016], [0031], [0037][0038]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made modify the method of Rozell et al. to include the predetermined time period time of at least one year as disclosed in Laufer in order to provide an average).

**3. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rozell et al. (US PG Pub. 2005/0004830), in view of Sprenger et al. (US PG Pub. 2003/0040946).**

As per claims 4-5, Rozell et al. disclose the method of claim 1, further comprising:

after calculating the cruise rating, comparing the cruise rating for each of the one or more cruises with the pricing data over a period of time (paragraphs [0057],[0063]-[0064]).

Rozell et al. does not disclose if the comparison exceeds a predetermined value; and calculating a new cruise rating based on the pricing data and the identified one or more additional correlation; and identifying one or more additional correlation between the pricing data and at least one price affecting factor; and calculating a new cruise rating based on the new pricing data and the identified correlation if the comparison does not exceed a predetermined value.

However, Sprenger et al. disclose that some activities have elements of other components, for example a cruise includes both travel and lodging (paragraph[ 0003]). Sprenger et al. further disclose that if the user has chosen a price or price range (i.e. a budget) before reaching the vacation preferences page (or while providing information to such page), the services shown may be determined as services available based on price. Sprenger et al. still further disclose that services that are returned by VPS 26 throughout the development of the travel plan that, when selected, exceed the budget, cause VPS 26 to prompt the user to reconsider (for example, to choose another price range or select another service) (Paragraph [0107]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to the modify the interactive interface of Rozell et al. to include the price threshold feature of Sprenger et al. to provide the user with a range of options appropriate for the user while giving the user the option to change parameters.

As per claim 6, Rozell et al. does not disclose determining the average price index for one or more cruise ships.

However, Sprenger et al. disclose that if user 10 is "middle of the road", the average price (of all the services available) is determined, and options for services are shown in order of increasing variance from the average. Sprenger et al. disclose that once user 10 chooses a value for each of the lodging parameters, user 10 will be able to see the services available meeting the values of the parameters by pressing the "Search" button on the "Lodging Preferences" page. For each available service for lodging, in addition to its name, its specifications (such as type, location and average price per night), and total price for the duration of the stay, are displayed on the "Lodging Selection" screen (as seen in FIG. 6) (Paragraph [0266]).

Therefore, it would have been obvious to modify the Rozell et al. system to include the average price index feature of Sprenger et al. in order to provide the customer with different ways of comparing prices.

### ***Conclusion***

4. The following is an examiner's statement of reasons for allowance:

A) the prior art for example:

(1) Rozell et al. (US PG Pub. 2005/0004830), disclose a system and method for indexing travel accommodations in a network environment.

(2) Laufer (US PG Pub. 2004/0006507), disclose a method for operating a combined hotel/limited time share facility.

(3) Sprenger et al. (US PG Pub. 2003/0040946), disclose a travel planning system and method.

However, in regard to claims 10-18 and 20-23, the prior art does not teach or suggest specific manner in which the cruise price being charged is evaluated.

5. The examiner has cited prior art of interest, for example:

1) Allen et al. (US PG Pub. 2003/0182413), which disclose a system and method for selecting a service provider.

2) Vig (Patent Number 6,038,554), which discloses non-subjective valuing© the computer aided calculation, appraisal and valuation of anything and anybody.

3) Vig (US PG Pub. 2005/0060271) which discloses non-subjective valuing.

4) Travelweb.com (04/10/1997)

5) "Travel Services International Introduces mytravelco.com(SM)", Jan 7, 2000, PRNewswire, 2 pgs.

Claim 10 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claim 16 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action.

Claims 11-15, 17-18, and 20-23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and/or 35 U.S.C. 101, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. The shortened statutory period of response is set to expire 3 (three) months from the mailing date of this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday-Thursday 7:00am - 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FAN 06/26/2007



IGOR N. BORISSOV  
PRIMARY EXAMINER